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FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1209 and 1250

RIN 2590-AA77

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment

AGENCY: Federal Housing Finance Agency

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing this final rule amending its rules of practice and procedure to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The FHFA is an independent agency of the Federal government, and the financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), as well as the Federal Home Loan Banks (collectively, the Banks) and the Office of Finance under authority granted by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).¹ FHFA oversees the Enterprises and Banks (collectively, the regulated entities) to ensure that they operate in a safe and sound manner and maintain liquidity in the housing finance market in accordance with applicable laws, rules and regulations. To that end, FHFA is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.² In particular, section 1376 of the Act (12 U.S.C. 4636) empowers FHFA to impose civil money penalties under specific conditions. FHFA's Rules of Practice and Procedure (12 CFR part 1209) govern cease and desist proceedings, civil money penalty assessment proceedings, and other administrative adjudications.³ FHFA's Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the Enterprises.⁴

The Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (the Inflation Adjustment Act) requires FHFA,

¹ See Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Public Law No. 102-550, 106 Stat. 4078 (Oct. 28, 1992) as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Public Law No. 110-289, 122 Stat. 2654, sections 1101 et seq. (July 30, 2008).

² See Safety and Soundness Act, 12 U.S.C. 4513 and 4631-4641.

³ See 12 CFR part 1209.

⁴ See 12 CFR part 1250.

as well as other Federal agencies with the authority to issue civil money penalties (CMPs), to adjust by regulation the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.⁵ The Inflation Adjustment Act required agencies to make an initial adjustment of their CMPs upon the statute's enactment, and further requires agencies to make additional adjustments on an ongoing basis, every four years following the initial adjustment. The purpose of these periodic adjustments is to maintain the deterrent effect of CMPs and promote compliance with the law. Subpart E of FHFA's Rules of Practice and Procedure sets forth the Civil Money Penalty Inflation Adjustment amounts and prescribes their applicability. See 12 CFR 1209.81.⁶

Under the Inflation Adjustment Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by a cost-of-living adjustment. As described in detail below, the Inflation Adjustment Act provides that this cost-of-living adjustment reflect the percentage increase in the Consumer Price Index since the CMPs were last adjusted or established, and rounded in accordance with rules provided in the statute.⁷

II. Differences

When promulgating any regulation that may have future affect relating to the Banks, the Director is required by section 1201 of HERA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. See section 1201

⁵ See 28 U.S.C. 2461 note.

⁶ Periodic inflation adjustments of the FHFA Flood Insurance regulation are set forth in 12 CFR 1250.3.

⁷ The Inflation Adjustment Act specifically identifies the Consumer Price Index for All Urban Consumers published by the United States Department of Labor (CPI-U).

Public Law 110-289, 122 Stat. 2782-83 (amending 12 U.S.C. 4513(f)[sic]).⁸ The Director considered the differences between the Banks and the Enterprises, as they relate to the above factors, and determined that the rule is appropriate. In sum, the five differences identified in section 1201 of HERA do not require a different enforcement regulation for the Banks than for the Enterprises. Therefore, the comparative analysis under section 1201 of HERA undertaken for the proposed rule required no changes.

III. Description of the Rule

This final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR 1209.80 to reflect the new adjusted maximum penalty amount that FHFA may impose upon a regulated entity or any entity-affiliated party within each tier. The increases in maximum penalty amounts contained in this final rule may not necessarily affect the amount of any CMP that FHFA may seek for a particular violation; FHFA would calculate each CMP on a case-by-case basis in light of a variety of factors.⁹ This final rule also adjusts the maximum penalty amounts for violations under the FHFA Flood Insurance regulation by amending the text of 12 CFR 1250.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation.

The Inflation Adjustment Act directs federal agencies to calculate each CMP adjustment as the percentage by which the CPI-U for June of the calendar year preceding the adjustment exceeds the CPI-U for June of the calendar year in which the amount of each CMP was last set or adjusted. The maximum CMP amounts for FHFA penalties

⁸ So in original; no paragraphs (d) and (e) were enacted. See 12 U.S.C.A. 4513 n 1.

⁹ See, e.g., 12 CFR 1209.7(c); FHFA Enforcement Policy, AB 2013-03 (May 31, 2013).

under 12 U.S.C. 4636 were set in 2008.¹⁰ Since FHFA is making this round of adjustments in calendar year 2016, and the maximum CMP amounts were last set in calendar year 2008, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI-U for June 2008 (218.8) with the CPI-U for June 2015 (238.6), resulting in an inflation factor of 1.0905. For each maximum CMP amount, the product of this inflation adjustment and the previous maximum penalty amount was then rounded in accordance with the specific requirements of the Inflation Adjustment Act, and was then summed with the previous maximum penalty amount to determine the new adjusted maximum penalty amount.¹¹ The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Inflation increase	Rounded inflation increase	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	10,000	905	1,000	11,000
12 U.S.C. 4636(b)(2)	Second Tier	50,000	4525	5000	55,000
12 U.S.C. 4636(b)(4)	Third Tier (Entity-affiliated party and Regulated entity)	2,000,000	181,000	175,000	2,175,000

¹⁰ See 12 U.S.C. 4636.

¹¹ The statute's rounding rules require that each increase be rounded to the nearest multiple as follows: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000.

The CMP for FHFA penalties under the Flood Insurance regulation were set in 2009¹². Since FHFA is making this round of adjustments in calendar year 2016, and the maximum CMP amounts were last set in calendar year 2009, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI-U for June 2009 (215.7) with the CPI-U for June 2015 (238.6), resulting in an inflation factor of 1.1061. The table below sets out these items accordingly.

U.S. Code citation	Description	Previous maximum penalty amount	Inflation increase	Rounded inflation increase	New adjusted maximum penalty amount
42 U.S.C. 4012a(f)(5)	Maximum penalty per violation	485	51.55	100	585
42 U.S.C. 4012a(f)(5)	Maximum total penalties assessed against an Enterprise in a calendar year	140,000	14,854	10,000	150,000

IV. Regulatory Impact

Administrative Procedure Act

FHFA finds good cause that notice and an opportunity to comment on this document are unnecessary under section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This rulemaking conforms with and is consistent with the statutory directive set forth in the Inflation Adjustment Act. As a result, there are no issues of policy discretion about which to seek public comment. Accordingly, FHFA is issuing the amendments as a final rule.

¹² See 74 FR 2349 (Jan. 15, 2009).

In addition, FHFA finds good cause to make this rule effective upon publication of this document in the **Federal Register** under the APA. See 5 U.S.C. 553(d). This final rule does not impose any additional responsibilities on any entity and therefore requires no adjustment to any entity's current operations, policies, or practices. Instead, it simply adjusts the amount of each CMP tier as dictated by the Inflation Adjustment Act.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),¹³ an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have “a significant economic impact on a substantial number of small entities.” However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA.¹⁴ As discussed above, FHFA has determined for good cause that the APA does not require notice and public comment on this rule and, therefore, FHFA is not publishing a general notice of proposed rulemaking. Thus, the RFA does not apply to this final rule.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

¹³ 5 U.S.C. 603.

¹⁴ 5 U.S.C. 603(a), 604(a).

List of Subjects

12 CFR Part 1209

Administrative practice and procedure, Penalties.

12 CFR Part 1250

Flood insurance, Government-sponsored enterprises, Penalties, Reporting and record keeping requirements.

Accordingly, for the reasons stated in the **Supplementary Information** and under the authority of 12 U.S.C. 4513b and 12 U.S.C. 4526, the Federal Housing Finance Agency hereby amends subchapters A and C of chapter XII of Title 12 of the Code of Federal Regulations as follows:

SUBCHAPTER A—ORGANIZATION AND OPERATIONS

PART 1209 —RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 554, 556, 557, and 701 et seq.; 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581-4588, 4631-4641; and 28 U.S.C. 2461 note.

2. Revise § 1209.80 to read as follows:

§ 1209.80 Inflation adjustments.

The maximum amount of each civil money penalty within FHFA's jurisdiction, as set by the Safety and Soundness Act and thereafter adjusted in accordance with the Inflation Adjustment Act, is as follows:

U.S. Code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	\$11,000
12 U.S.C. 4636(b)(2)	Second Tier	55,000
12 U.S.C. 4636(b)(4)	Third Tier (Entity-Affiliated party)	2,175,000
12 U.S.C. 4636(b)(4)	Third Tier (Regulated entity)	2,175,000

3. Revise § 1209.81 to read as follows:

§ 1209.81 Applicability.

The inflation adjustments set out in § 1209.80 shall apply to civil money penalties assessed in accordance with the provisions of the Safety and Soundness Act, 12 U.S.C. 4636, and subparts B and C of this part, for violations occurring after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

SUBCHAPTER C—ENTERPRISES

PART 1250 —FLOOD INSURANCE

4. The authority citation for part 1250 continues to read as follows:

Authority: 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

5. Revise § 1250.3(c) to read as follows:

§ 1250.3 Civil money penalties.

* * * * *

(c) Amount. The maximum civil money penalty amount is \$485 for each violation that occurs before [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], with total penalties not to exceed \$140,000. For violations that occur on or

after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the civil money penalty under this section may not exceed \$585 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed \$150,000.

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Melvin L. Watt,
Director, Federal Housing Finance Agency.

February 15, 2016_
Date

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